



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Fischer & Porter Company

File: B-229764

Date: March 17, 1988

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### DIGEST

Agency properly declined to consider offeror's low priced best and final offer for Office of Management and Budget Circular A-76 cost comparison where the agency reasonably found that the offeror's proposal, after discussions, contained major deficiencies concerning staffing and failed to provide required quality control plan.

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### DECISION

Fischer and Porter Company (F&P) protests a determination by the Department of Labor, Mine Safety and Health Administration (MSHA) under Office of Management and Budget Circular No. A-76 to maintain in-house performance of operation and support services at the National MSHA Academy in Beckley, West Virginia. MSHA based its determination on a comparison of the costs of in-house performance with the costs of contractor performance as determined under request for proposals (RFP) No. S2870800.

We deny the protest.

On April 20, 1987, the agency issued the RFP seeking offers for a firm fixed-price (FFP) contract for labor including supervision, training, travel and other overhead costs required for specified tasks associated with operating the Academy for a phase-in period, base year and four 1-year options. The RFP advised prospective offerors that the agency would select the technically acceptable proposal offering the lowest realistic cost compared to the previously prepared estimate of the cost of government performance. The agency would award a contract only if this comparison indicated that contractor performance would be more economical.

The RFP instructed offerors to submit their proposals in three volumes, the management plan in a separate volume from the contract pricing proposal and experience factors. The

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management plan was to contain three parts showing proposed organization structure and proposed overall staffing, "technical understanding of and management plan for accomplishing solicitation requirements" and a transition plan. Amendment No. 2, issued on June 8, instructed offerors to add a quality control plan to the management plan. Of the factors listed under technical understanding, factor "A" consisting of organization, personnel and management was most important. The other factors listed were technical, business and operational considerations; experience/capability; and transition.

The agency received three offers on July 17, 1987, the date for receipt of initial proposals, from Varga Enterprises, Inc. (Varga), from Instruments & Corols Service Company (I&CS) and from the protester. Varga's proposal contained no cost data and consisted of only two pages; the agency's technical evaluation committee (TEC) considered Varga's proposal unacceptable and eliminated it without further discussion. On September 9 and 10, the agency met with I&CS and the protester to discuss weaknesses and deficiencies in their proposals; by letter of September 28, the agency provided both offerors with a list of typed questions reflecting the issues raised in the clarification sessions.

Following receipt of best and final offers on October 6, the TEC reviewed both proposals. Although the TEC conceded that the protester's proposal was excellent in many respects, such as its use of "state of the art" systems and procedures, particularly management information systems, it found that the proposal contained critical deficiencies with regard to its staffing plan and its failure to provide a quality control plan as required by amendment No. 2 to the RFP. The TEC rated the protester's proposal as "marginal" in terms of meeting the agency's needs. As a consequence, the contracting officer selected the proposal submitted by I&CS, the only technically acceptable offeror, as offering the best value to the government despite the fact that I&CS' proposed costs of \$3,683,760 exceeded the protester's proposed cost of \$1,033,326. With a conversion differential added for purposes of the A-76 comparison, I&CS' proposed cost exceeded the estimate of \$1,664,937 for in-house performance, and the agency therefore decided not to contract for the required services.

By letter of November 18, 1987, the agency notified the protester that its proposal was considered inadequate based on its failure to provide adequate staffing and its weakness

in planning for emergency response and snow removal.<sup>1/</sup> Although not so stated in the letter, the TEC also found F&P unacceptable for its failure to submit a quality control plan. The protester received this letter on November 23 and filed this protest on December 8, 10 working days after learning of the exclusion of its proposal.

The protester's position is that the agency violated the Federal Acquisition Regulation and acted unfairly in failing to consider F&P's lower cost proposal in the cost comparison. F&P asserts that its "marginal" rating was arbitrary and that this rating was intended to insure that the government estimate would be compared with I&CS's much higher price and consequently that the required work would be kept in-house.

Although the TEC found several weaknesses in the protester's proposal, the TEC specifically stated that the problems with the staffing plan and the protester's failure to provide a quality control plan, where it lost more than half of the available points, caused its proposal to be considered marginal, and, in effect, unacceptable.

In reviewing protests concerning the evaluation of proposals, our function is not to reevaluate the proposal and make our own determination about the merits. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from defective evaluations. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will examine the agency's evaluation only to ensure that it had a reasonable basis. RCA Service Co., et al., B-218191 et al., May 22, 1985, 85-1 CPD ¶ 585. Additionally, the fact that a protester does not agree with an agency's evaluation does not render the evaluation unreasonable or contrary to law. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

The first major deficiency noted in the protester's plans to perform the task was the protester's failure to submit a quality control plan. The protester argues that it addressed quality control throughout its proposal and that if the agency needed a quality control plan it should have

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<sup>1/</sup> In its protest letter, F&P stated that upon its "information and belief" its alleged weakness in planning for emergency response and snow removal did not cause rejection of its bid. The record supports the protester on this point, infra.

communicated its concerns during discussions. The protester concedes that its proposal did not include a separate section for a quality control plan, but asserts that it nonetheless contained "much information on how it would achieve successful performance." As examples, the F&P proposal explained that its project manager would be in charge of quality inspection and that "a well conceived and documented Quality Control System" would be established and maintained. F&P also refers to a statement that all tasks would be performed "in accordance with prescribed quality assurance standards and as specified by appropriate technical manuals." F&P also points out that its work flow diagram prominently displays a "quality inspection" box and specific quality control inspection steps were periodically referenced in F&P's management proposal.

We agree with the TEC that none of the above substitutes for a quality control plan as the RFP specifically called for. In essence, the protester's response to the quality control requirement was a statement that it would comply in the future. No specific plan was provided for evaluation by the agency. We find no basis to question the agency's conclusion that a quality control plan was essential for performance under the contract. Our review of F&P's proposal does not demonstrate even the rudiments of an acceptable quality assurance plan. We do not find the agency to have been unreasonable in considering the absence of a plan to be a major deficiency.

Further, while the agency did not specifically ask for a quality control plan during discussions, it did raise questions about the responsibility for, the frequency of and the manner of performing quality inspections. Agencies are not obligated to afford offerors all-encompassing discussions, only to lead offerors generally into the areas of their proposals which requires amplification. TM Systems, Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. The fact that the agency inquired about quality control procedures should have alerted the protester that its information was absent from its proposal, especially where the RFP as amended specifically called for such a plan. Moreover, we have stated that where a solicitation specifically calls for certain information, the agency should not be required to remind the offeror to furnish the necessary information with its final proposal. Logistics Systems, Inc., 59 Comp. Gen. 548 (1980), 80-1 CPD ¶ 442.

The criticisms of the protester's staffing plan were: (1) confusion concerning the number of people assigned to the project; (2) the use of part-time employees for all non-supervisory positions, and (3) the protester's unrealistic expectations for hiring skilled workers in a short period of

time. We herein address only the first two concerns, but note that the protester has not attempted to rebut the TEC's criticisms of its expectations for hiring skilled workers.

The protester argues that the agency rating of its staffing plan was arbitrarily lower because its staffing plan provided for 12,742 estimated annual hours while the government's estimate of 13,441 hours was only 5 percent higher. Furthermore, the protester charges that the agency confused the term "periodic," referring to the protester's full-time personnel headquartered elsewhere but devoting a significant part of their time to the Academy contract, with "part-time"; in fact, as the protester points out, the government relied heavily on part-time personnel in its own staffing estimates.

From our review of the record, it appears that the protester's argument neglects some major reasons for its low rating. We find no evidence that the TEC showed concern over the protester's estimated hours; rather, as the contracting officer points out the protester's estimated hours appear from the proposal to exceed the in-house figure. However, the agency was confused as to what quantity of staffing and the coverage F&P was proposing. The record indicates that the protester informed the agency during discussions that it planned to use three supervisors and four "periodic" technicians; the "periodic" technicians would provide "approximately 2,000 hours of labor each." The agency points out that three full-time personnel at 2,080 hours plus four "periodic" personnel at 2,000 hours equals 14,240 hours. We note that the protester's responses to the agency's questions refer to six personnel (question 63) and seven personnel (questions 15 and 44); its protest letter and manning chart show eight personnel in addition to two support personnel.<sup>2/</sup> Thus, the precise staffing level and obviously the adequacy of the coverage, even after discussions, on this were unclear.

Furthermore, the term "periodic" caused confusion because it was left undefined. For example, it is not clear why essentially full-time personnel working 2,000 hours a year are included in the "periodic" classification with two full-time F&P support personnel, located in Warminster, Pennsylvania, who are to devote only 25 percent of their time to the MSHA Academy contract. We do not find that it

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<sup>2/</sup> The protester's Director of Field Services and an individual not identified in the proposal but now identified as a quality assurance representative.

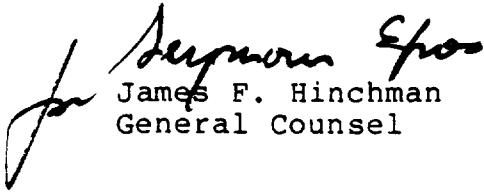
was improper to downgrade F&P for its staffing due to ambiguities contained in the protester's proposal and the agency's inability to determine F&P's precise staffing levels.

Based on the deficiencies concerning staffing and a quality assurance plan, we find the agency reasonably downgraded F&P's proposal in these areas. The record reasonably supports the agency's finding that F&P's proposal contained major deficiencies and failed to demonstrate the potential to meet the agency's minimum needs. The agency thus properly refused to consider the proposal for the cost comparison.

The protester also alleges that the agency predetermined the outcome of the cost comparison by rigging the technical evaluation to insure that the government estimate was compared with a higher-priced "gold-plated" proposal, against which it was certain to win. The protester argues that by eliminating both the F&P proposal and the Varga proposal the agency violated Part 15.6 of the Federal Acquisition Regulation requiring the government to consider price or cost as an evaluation factor in every source selection. The protester asserts that contrary to the solicitation statement that the lowest technically acceptable offer would be used for the cost comparison, the agency chose I&CS' proposal based on its technical superiority as representing the "best value" to the government. This argument presumes the acceptability of the protester's proposal, a presumption not borne out by the record before our Office.

It is clear that the evaluation scheme did provide for the consideration of cost by providing for selection of the lowest realistic and technically acceptable offer for the cost comparison. The fact that the agency found only one offer technically acceptable does not affect this finding, nor does it indicate that the agency departed from the announced evaluation criteria. We see no reason to question the agency's conclusion that the protester's offer was not acceptable based on the problems noted; we will not attribute bias to an evaluation panel simply on the basis of inference or supposition. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. The record simply does not support the protester's allegations.

Since we deny the protest, F&P's request for the cost of filing and pursuing its protest, including attorney's fees, is denied.

James F. Hinchman  
General Counsel